IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Crl.MC.No. 26 of 2005(C)

G.253/2004 of SUB DIVISIONAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: COUNTER PETITIONER:

MANILAL, S/O. VALSAN,
CHEMBANKUNNU VEETTIL, NEDUMGANDA P.O.,
VILABHAGAM, VARKALA.

BY ADV. SRI.M.DINESH
SRI.BASANT BALAJI

RESPONDENTS: PETITIONER:

1. URVASI, W/O. MADHAVAN,
THODIYIL VEEDU, CHEMBANKUNNU DESOM,
VETTOOR VILLAGE, VARKALA.

2. THE SUB-DIVISIONAL MAGISTRATE,
THIRUVANANTHAPURAM.

BY ADV. SRI. M.S. BREEZE, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 26 Of 2005

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Dated this the 24th day of October, 2007

ORDER

The petitioner has come to this Court, unnecessarily according to me with an assumed grievance. He has a well in his property. The members of the public appear to stake a claim for the right to use / draw water from that well. According to the petitioner there is no public right for any one to draw water from the well. There is a private dispute between the petitioner and some others on that aspect. Civil Court is already seized of the matter. According to the petitioner proceedings before the Sub Divisional Magistrate are unnecessary and unjustified.

2. Has the Sub Divisional Magistrate passed any order? No conditional order under Sec.133 Cr.P.C.has been passed by the Sub Divisional Magistrate admittedly. It would appear that the SDM is only contemplating whether any conditional order ought to be passed or not. The petitioner needless to say, shall be at liberty to place all relevant materials before the learned Sub Divisional Magistrate at the pre-conditional order stage also. It is only a when a conditional order under Section 133 Cr.P.C is passed that the petitioner can be said to have any justifiable grievance to be raised. Inasmuch as no such order has been passed, I am satisfied that this Crl.M.C does not deserve to be entertained now.

This Crl.M.C is hence dismissed.

(R.BASANT, JUDGE)

sj